

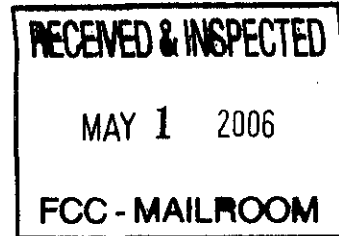
# Gayville-Volin School District 63-1

Superintendent's Office:  
**Jason W. Selchert, ED. S.**  
100 Kingsbury  
Gayville, SD 57031-0158

Email: [jason.selchert@k12.sd.us](mailto:jason.selchert@k12.sd.us)  
Phone: (605) 267-4476 ext. 13  
Fax: (605) 267-4294

April 26, 2006

DOCKETED ORIGINAL



Federal Communications Commission  
Office of the Secretary  
9300 East Hampton Drive  
Capitol Heights, MD 20743

**Request for Review**  
**CC Docket No. 02-6**  
**CC Docket No. 96-45**

To Whom It May Concern:

I am writing on behalf of the Gayville-Volin School District, located at PO Box 158, 100 Kingsbury, Gayville, SD 57031-0158 to appeal a Schools and Libraries Division (SLD) decision denying E-Rate funding. My appeal relates to the following:

Billed Entity Applicant Name:	Gayville-Volin School District
Funding Request Number:	1298727, 1298743
Form 471 Application Number:	471545
Contact Name:	Jason Selchert
Contact Phone Number:	605/267-4476 ext. 13
Contact Fax Number:	605/267-4294
Contact Email:	<a href="mailto:Jason.Selchert@k12.sd.us">Jason.Selchert@k12.sd.us</a>

The Gayville-Volin School District was denied E-Rate funding by SLD because of an alleged contract violation for Funding Year 2005-2006. An appeal letter was mailed to SLD on November 2, 2005. A denial letter from SLD was received by Gayville-Volin School District on March 16, 2006.

The SLD contends that the contract for the requested products/services was not properly signed and dated by both parties prior to the filing of the Form 471 on February 16, 2005. A copy of the SLD denial letter is attached at Tab A. I have highlighted the pertinent portion of the SLD's denial decision. Tab B is a copy of the contract for services showing an effective date of February 10, 2005 and an approval stamp by PrairieWave counsel also dated February 10, 2005. Attached at Tab C are notarized documents from Patrick Mastel the Corporate Counsel at PrairieWave Communications, Inc. and Jason Selchert, Superintendent of Gayville-Volin School District, attesting to the fact that both parties signed the contract on February 10, 2005. Also Tab D contains the notarized minutes dated February 10, 2005 from the Southeast South Dakota Distance Learning Project signed by Shane Voss, Chairman of

No. of Copies rec'd \_\_\_\_\_  
List ABOVE

the Board for 2005-2006 with minutes highlighted stating that each school had signed the PrairieWave contract at the February 10, 2005 Board meeting.

The pertinent portion of 47 C.F.R. ¶ 54.504(c) states that the eligible school, "shall, upon signing a contract for eligible services, submit a completed FCC Form 471 to the Administrator." This is exactly what the Gayville-Volin School District did. Based on the documentary evidence submitted to the SLD, there is no basis for the conclusion by the SLD that, "at the time you submitted your Form 471 application, you did not have a signed contract for services in place . . . ." According to the FCC rules the contract to be valid must be signed by both parties. It is signed by both parties. The contract has to be dated to demonstrate when it is effective to ensure that there is a contract in place prior to submission of the Form 471. It is dated February 10, 2005, which was the date on the contract when it was submitted to SLD. Accordingly, the contract must have been signed and in effect prior to the submission to the SLD on February 16, 2005 as required by the FCC rule cited above.<sup>1</sup> Any bureaucratic conclusion to the contrary is not supported by fact or law.

It is extremely important and vital to Gayville-Volin School District that it receive E-Rate funds for the continuation of our Distance Learning System. The funding supports critical educational services to a very rural part of South Dakota. The PrairieWave contract did meet the legal requirements of the FCC rule prior to the filing of the Form 471 for Funding Year 2005.

Thank you for your attention to this matter.

Sincerely,



Jason Selchert  
Superintendent  
Gayville-Volin School District  
PO Box 158, 100 Kingsbury  
Gayville, SD 57031-0158

Enclosures: as

cc: PrairieWave Communications, Inc.  
South Dakota Congressional Offices

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<sup>1</sup> The SLD reviewer cites to *Request for Review by Waldick School District, Schools and Libraries Universal Support Mechanism*, File No. SLD-256981, CC Docket No. 02-6, 18 FCC Rcd. 22,994, DA 03-3526 (2003) to support its conclusion. The facts in *Waldick* are not at all comparable to the instant situation (*Waldick* tried to rely on the month-to-month exception, could not produce any contract document with the listed service provider, and filled out the Form 471 incorrectly). However, in *Waldick*, at paragraph 3, the FCC did state that an applicant must have "a signed contract" or a "legally binding agreement" with PrairieWave. The contract in this instance, on its face, is a signed contract and a legally binding document, and was submitted to the SLD with the Form 471 with that legal status.





**Universal Service Administrative Company**  
Schools & Libraries Division

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**Administrator's Decision on Appeal – Funding Year 2005-2006**

March 16, 2006

Jason Selchert  
Gayville-Volin School District  
P.O. Box 158, 100 Kingsbury  
Gayville, SD 57031-0158

Re: Applicant Name: GAYVILLE-VOLIN SCHOOL  
Billed Entity Number: 215595  
Form 471 Application Number: 471545  
Funding Request Number(s): 1298727, 1298743  
Your Correspondence Dated: November 02, 2005

After thorough review and investigation of all relevant facts, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) has made its decision in regard to your appeal of SLD's Funding Year 2005 Funding Commitment Decision Letter for the Application Number indicated above. This letter explains the basis of SLD's decision. The date of this letter begins the 60-day time period for appealing this decision to the Federal Communications Commission (FCC). If your Letter of Appeal included more than one Application Number, please note that you will receive a separate letter for each application.

Funding Request Number(s): 1298727, 1298743  
Decision on Appeal: Denied  
Explanation:

- On appeal, you dispute the SLD's decision to deny these funding requests because the District did not have a contract that was signed and dated by both parties prior to the filing of its Form 471 application. You state that the District's agreement with PrairieWave was signed on February 10, 2005 by the Superintendent of Gayville-Volin School district and the Vice-President and Chief Operating Officer of PrairieWave, as is noted by the Effective Date as well as the handwritten, approved date. You further state that this agreement dated February 10, 2005 verifies that there was, in fact, a signed agreement on file with PrairieWave prior to the filing of the Form 471. You have provided a copy of the contract in support of your appeal.

- Upon thorough review of the appeal letter and relevant documents, it was determined that the District was sent a Selective Review Information Request (SRIR) on July 25, 2005. This request asked you to provide copies of the District's Funding Year 2005 contracts as part of your response. The District's response on August 29, 2005 included a copy of the District's contract with PrarieWave Communications. Review of this contract found that it was not signed and dated by both parties prior to the District's filing of its Form 471 application. FCC rules state that a contract must be signed and dated by both parties prior to the filing of the Form 471. On appeal, you have stated that the agreement was signed on February 10, 2005, as is noted by the Effective Date as well as the handwritten, approved date. However, this does not verify that both parties agree that the effective date was the same as the executed contract date. Consequently, the appeal is denied.
- SLD has determined that, at the time you submitted your Form 471 application, you did not have a signed contract for services in place with your service provider(s) for services other than tariffed or month-to-month services. FCC rules require that applicants submit a completed FCC Form 471 "upon signing a contract for eligible services." 47 C.F.R. § 54.504(c). The FCC has consistently upheld SLD's denial of Funding Request Number(s) when there is no contract in place for the funding requested.<sup>1</sup> The FCC Form 471 instructions under Block 5 clearly state that you **MUST** sign a contract for all services that you order on your Form 471 except tariffed services and month-to-month services.<sup>2</sup> You did not provide evidence with your appeal that, at the time you signed your Form 471, you had signed a contract for eligible services. Consequently, SLD denies your appeal.

If your appeal has been approved, but funding has been reduced or denied, you may appeal these decisions to either the SLD or the FCC. For appeals that have been denied in full, partially approved, dismissed, or canceled, you may file an appeal with the FCC. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received or postmarked within 60 days of the date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD web site or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

We thank you for your continued support, patience and cooperation during the appeal process.

Schools and Libraries Division  
Universal Service Administrative Company

<sup>1</sup> *Request for Review by Waldwick School District, Schools and Libraries Universal Service Support Mechanism*, File No. SLD-256981, CC Docket Nos. 02-6, Order, 18 FCC Rcd. 22,994, DA 03-3526 (2003).

<sup>2</sup> See Instructions for Completing the Schools and Libraries Universal Service. Services Ordered and Certification Form, OMB 3060-0806 (October 2004) at page 20.

Jason Selchert  
Gayville-Volin School District  
P.O. Box 158, 100 Kingsbury  
Gayville, SD 57031-0158

Billed Entity Number: 215595  
Form 471 Application Number: 471545  
Form 486 Application Number:

B

**Exhibit 5**  
**DESCRIPTION OF SERVICES, SERVICE LOCATIONS AND**  
**PRICES**  
**INTRASTATE**

**SERVICE**

PrairieWave shall provide and SILDL shall pay for service which provides a dedicated, point to point intrastate, intralata telecommunications network as described herein. Service is two (2) standard DS-1 circuits using various forms of medium at 1.544 Mbps of which one circuit from the location listed below will be to an Internet access point of PrairieWave's choosing.

Service is furnished on a twenty-four (24) hour per day, seven (7) day per week basis.

**Responsibilities**

1. Member shall provide adequate space and power for PrairieWave's equipment installed at Member facilities. PrairieWave shall install and maintain such equipment in a secure location.
2. Monthly Charge  
Member shall pay to PrairieWave the monthly charge for the applicable service to that Member's site in accordance with the following schedule:

Service	Service Fee
• One DS-1 circuit, Gayville-Volin High School in Gayville to PrairieWave Central Office in Viborg.	\$811.40 per month
• One DS-1 circuit, Gayville-Volin High School in Gayville to Internet Backbone Access Point	\$756.44 per month

Such monthly charges shall be billed by PrairieWave to each Member, in advance, after service is operational at the Member's site, and shall be payable according to PrairieWave's usual terms for monthly billing.

3. The Service Agreement, including Addendum thereto if applicable, shall constitute a distinct and separate contract between PrairieWave and each Member for provision of Services to that Member, and each such contract shall be identified by the contract number indicated above the Member name below.
4. The services which PrairieWave is obligated to provide pursuant to the Service Agreement may be provided by means of an agreement between PrairieWave and another service provider, including any PrairieWave subsidiary or affiliate.



PrairieWave will install and maintain the following described service terminating at the following location and will make every reasonable effort to complete installation and have service available on the date noted:

**Service Location and Install Dates**

Service Location	Install Target Date	Type of Service	Termination Point
Gayville-Volin High School Box 158 Gayville, SD 57013-0158	July 1, 2005	One DS-1 circuit for Video/Audio and One DS-1 circuit for Internet	PrairieWave Central Office 2002 Industrial Road Viborg, SD

The person signing below does hereby warrant that he or she has been authorized by the governing body of the entity on behalf of which he or she signed to approve, ratify and execute this **AGREEMENT** between Member and PrairieWave. This Agreement will become an Exhibit to the Master Agreement and be incorporated therein by reference.

Effective Date: February 10, 2005

Contract Number DL2005100027  
Gayville-Volin School District

By: 

PrairieWave Communications, Inc.



BY: Brent Norgaard

It: Vice President and Chief Operating Officer

APPROVED



Law Group  
Date 2/10/05

C

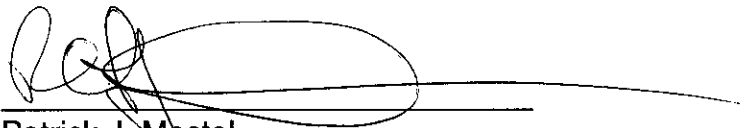
STATE OF SOUTH DAKOTA     )  
  )  
  )  
  )  
  )  
COUNTY OF LINCOLN         )

ss.

I, Patrick J. Mastel, a licensed attorney, do hereby state as follows:

- 1) That I am a licensed attorney employed by PrairieWave Communications, Inc. and was so employed on February 10, 2005.
- 2) That I personally reviewed and approved the Exhibit 5, Description of Services, Service Locations, and Prices Intrastate.
- 3) That I personally observed Brent Norgaard, PrairieWave's Vice President and Chief Operating Officer, sign the Exhibit 5.
- 4) That the date of my approval, February 10, 2005 was the date of the PrairieWave officer, Brent Norgaard's, signature and approval.

Dated this 12 day of April, 2006



Patrick J. Mastel  
Senior Legal Counsel  
PrairieWave Communications, Inc.  
5100 S Broadband Lane  
Sioux Falls, SD 57108

On this 12 day of April, 2006, before me personally appeared Patrick J. Mastel, and before me, a Notary Republic did sign this document and swear to its contents.



Notary Republic

My commission expires:

KRISTIE LYNSTAD  
Notary Public, South Dakota  
My Commission Expires June 7, 2007

SEAL

STATE OF SOUTH DAKOTA     )  
  )  
  )  
  )  
COUNTY OF YANKTON        )  
  )

  ss.

I, Jason Selchert, Superintendent of Schools for Gayville -Volin School District, Gayville, South Dakota, state that on February 10, 2005, I entered into and signed an agreement with PrairieWave Communications, Inc. for Distance Learning Circuits (Contract Number DL 2005100027) as evidenced in the minutes of the meeting which are attached hereto.

Sworn to and signed this 13<sup>th</sup> day of April, 2006.

Jason Selchert  
Jason Selchert

Sworn to and signed before me this 13<sup>th</sup> day of April, 2006

Dawn M. Haase  
Notary Public

*My commission expires 6/15/2010*

D

Minutes of the  
Southeast South Dakota Distance Learning Project  
Thursday, February 10, 2005

A meeting of the Southeast SD Distance Learning Project Committee members was held on Thursday, February 10, 2005, at the Southeast Area Cooperative, Beresford, SD. Members present were: Jerry Joachim, Superintendent, Alcester-Hudson School District; Tom Oster, Superintendent, Avon School District; Doug Voss, Superintendent, Centerville School District; Angie Brown, CCHS; Shane Voss, Superintendent, Hurley School District; Jason Selchert, Superintendent, Gayville-Volin School District; Dean Jones, Superintendent, Tea Area Schools; Larry Johnke, Superintendent, Irene and Wakonda School Districts; Tracey Olson, Superintendent, Parker School District; Pat Kraning, Superintendent, Viborg School District; Dawn Haase, PrairieWave; Bonnie Overweg, Dakota Academic Consulting; Don Versteeg, Coordinator; and Carol Hazel, Business Manager, Southeast Area Cooperative.

Pat Kraning moved and Jerry Joachim seconded to approve the minutes of the January 13, 2005 meeting as presented. All present voted yes.

Pat Kraning moved and Angie Brown seconded to approve the financial report as presented and approve the bills for payment as presented. All present voted yes.

Dean Jones moved and Tom Oster seconded to approve the agenda as presented. All present voted yes.

Bonne Overweg reported on tech plans and 471's.

Don Versteeg reported on the operation of the LDL system for the month; the ribbon cutting that was held on January 18, 2005; and the Principal's meeting. Discussion was held on the Spanish teacher position. Irene Schools had received one application for the position. It was decided that an ad should be run in the Sioux Falls Argus Leader with the SILDL group paying for the ad. Location of the teacher was also discussed. Other items discussed were the pay; interviewing and the timeline for hire.

The three distance learning studios and equipment becoming available was discussed. Centerville School had requested they house one of the un-used studios and use it for classes. Discussion followed on the use of the surplus equipment and the cost of using the equipment in a second lab in a school district and how the school district would be chosen if it were housed in an existing member school. Further discussion will follow at the March meeting.

Other items reported on were the SILDL -USD meeting held on Tuesday, February 7 with Royce Engstrom, Vice President of Academic Affairs at USD. This was an informational meeting. InterTel and network issues were discussed and it was decided that during the summer months, a rebuilding of the entire LDL network would need to take place if the network problem was still unanswered. The school calendars were also discussed.

Don Versteeg has been in contact with PrairieWave and the new telecommunications contract numbers have been received. The revision is due to the three schools dropping from the system. Each school signed the contract and copies will be distributed to the schools at the next meeting.

A switch at the hub will need to be replaced. Jerry Joachim moved and Pat Kraning seconded to approve purchase with InterTel for the switch. All present voted yes.

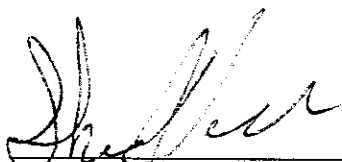
Associate memberships were discussed. Don Versteeg will meet with Mount Marty to discuss possible associate membership for next year.


Distance Learning Legislations was introduced in the Senate Education Committee on Tuesday, February 7, 2005. Don Versteeg reviewed what the legislation would mean to the SILDL group. Don will keep the board informed on the progress of the bill.

Tuition rates were discussed for second semester. Jerry moved and Dean Jones seconded to approve tuition at \$55.00 per student for the Spring 2005 semester.

The next meeting of the SILDL will be held on Thursday, March 10, 2005 at 1:00 p.m. at the Southeast Area Cooperative building in Beresford.

Jerry Joachim moved and Tracey Olson seconded to adjourn the meeting. All present voted yes.

  
Shane Voss, Chairman

  
Carol Hazel, Business Manager

 4-13-06

Sworn to and signed before me this 13<sup>th</sup> day  
of April, 2006.

Lawn M. Haas, Notary Public  
My commission expires 6/15/2010.

Gayville - Volin School Dist.  
Attn: Jason Selchert  
100 Kingsbury  
Gayville, SD 57031-0158



7003 3110 0005 5046 5642

Route  
**Tina**  
Delivery Point

**TW-B204**

05/01/06  
16:02:40

OMD  
PO#

Sdr GAYVILLE-VOLIN SCH00

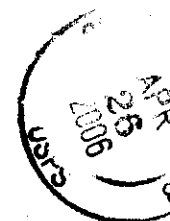
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RETURN RECEIPT  
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Federal Communications Commission  
Office of the Secretary  
445 12th Street, SW  
Room TW-A325  
Washington, DC 20554



RECEIVED & INSPECTED  
MAY 1 2006  
FCC - MAILROOM